COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Hand Delivered

Re: In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Phase II Issues; Docket No. 96-98

Dear Secretary Caton:

Enclosed are an original and twelve copies of the Initial Comments of the Pennsylvania Public Utility Commission in Phase II of the above captioned proceeding. By separate cover letter, in accordance with paragraph 292 of the Commission's Order, we have also sent a copy of our Initial Comments in Phase II on diskette to Janice Myles of the Common Carrier Bureau.

Please do not hesitate to contact the undersigned if you have any questions concerning this matter.

Very truly yours,

Maureen A. Scott
Assistant Counsel

MAS/ms

Enclosure

No. of Copies rec'd 0218
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	**CC Docket No. 96-98**
	)	
	)	

INITIAL COMMENTS OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION ON NUMBERING ISSUES

I. Introduction

On April 19, 1996, the Federal Communications Commission ("FCC" or "Commission") released a Notice of Proposed Rulemaking ("NOPR") to implement §§ 251 and 252 of the Telecommunications Act of 1996 (the "1996 Act"). The following Comments are submitted on behalf of the Pennsylvania Public Utility Commission ("PaPUC") in response to the issues raised in phase II of this proceeding. The Commission requested that parties address issues related to dialing parity, number administration, notice of technical changes and access-to-rights-of-way in phase II by May 20, 1996. For purposes of this initial filing, the PaPUC will focus its comments on the dialing parity and numbering issues. The PaPUC submitted Comments in response to the issues raised in phase I of the FCC's NOPR on May 16, 1996.

II. Discussion

A. Dialing Parity

It is not clear that the provisions of § 251 apply to the provision of intraLATA toll dialing parity given the specific mandates to states contained in § 271(e) of the Act. Consequently, while PaPUC will comment on this issue, it is not at all clear that § 251 gives

the FCC the authority to establish uniform IntraLATA toll dialing parity requirements and implementation timetables. As discussed below, even if § 251 does give the Commission some authority in this regard, the Commission cannot set aside state commission orders issued prior to December 19, 1995, which are grandfathered in under § 271 of the 1996 Act.

The Commission seeks comment on specific alternative methods for implementing local and toll dialing parity, including various forms of presubscription, in the interstate and intrastate long distance and international markets that are consistent with the requirements of the 1996 Act. In para. 212, the FCC also seeks comment on what implementation schedule should be adopted for dialing parity obligations for all LECs.

We agree that presubscription represents the "most feasible method of achieving dialing parity in long distance markets consistent with the definition of dialing parity in section 3(15) of the 1996 Act" and that presubscription is the most commonly used and accepted method in existence today. NOPR, para. 207. The PaPUC ordered 1 plus presubscription in the intraLATA toll market in Pennsylvania on December 14, 1995, after the conclusion of a lengthy 18 month investigation into this issue.[1] Pursuant to our Order, Pennsylvania LECs will be required to implement intraLATA presubscription based on the use of the full 2-PIC method. Exhibit A at p. 20. Our Order contains a bifurcated implementation schedule which requires LECs serving in excess of 250,000 access lines to implement intraLATA toll dialing parity by June 30, 1997, and, LECs serving 250,000 access lines or less to implement intraLATA toll dialing parity by December 31, 1997. Exhibit A at page 20.

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[1] Investigation Into IntraLATA Interconnection Arrangements, Opinion and Order, PaPUC Docket No. I-00940034, (Entered December 14, 1995) ("Exhibit A").

Section 271(e)(2)(B) provides for immediate implementation of state orders issued prior to December 19, 1995, as those Orders may pertain to Bell Operating Companies ("BOCs"). No restriction is imposed on states' efforts to direct intraLATA toll dialing parity implementation by companies other than BOCs. Since the PaPUC's Order was issued on December 14, 1995, its effective date is not subject to delay under the 1996 Act but rather is grandfathered in under § 271 and remains in full force and effect. The PaPUC went to great lengths during the Congressional debates to ensure that its determinations on this issue would be recognized and that the effectiveness of its order would not be delayed.[2] The Commission has no authority under the Act to set aside or interfere with state orders implementing intraLATA toll dialing parity, such as Pennsylvania's, which were grandfathered in under § 271 of the Act and which have already taken effect.[3]

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[2]Investigation Into IntraLATA Interconnection Arrangements, Opinion and Order, PaPUC Docket No. I 00940034 (Entered December 14, 1995) at p. 19 ("We are taking this important action today because of the exigent circumstances which exist pertaining to the Commission's efforts to design a Pennsylvania-specific policy governing the implementation of intraLATA presubscription. Such efforts relate to the potential enactment of legislation by the United States Congress which is currently considering comprehensive telecommunications legislation which if enacted would have far-reaching impact on the regulation of the telecommunications industry at both the federal and state levels. While we expect that any federal legislation will permit states with established policy concerning the initiation of intraLATA presubscription to implement their state-specific policies, it appears that such deference will only be granted if a given state policy is established in a timely manner as defined by any final federal legislation. This factor and resulting exigent circumstances prompts us to act so as to assure that we are able to implement intraLATA presubscription policy which is specifically designed to meet the unique needs of Pennsylvania consumers...").

[3]Section 271(e)(2) provides that, "...A Bell operating company granted authority to provide interLATA services under subsection (d) shall provide intraLATA toll dialing parity throughout that State coincident with its exercise of that authority....[e]xcept for single-LATA States and States that have issued an order by December 19, 1995, requiring a Bell operating company to implement intraLATA toll dialing parity, a State may not require a Bell operating company to implement intraLATA toll dialing parity in that State before a Bell operating

Finally, we also do not believe that the FCC should preclude enforcement of state orders adopted after December 19, 1995 or usurp the role of other states which have not yet acted from doing so within the timeframe contemplated by § 271(e)(2)(B). There is undoubtedly an important interrelationship between this issue and others which many states are now in the process of addressing. We recognized this important interrelationship in our December 14, 1995 Order implementing intraLATA toll dialing parity.[4]

In summary, the Commission's authority to set nationwide requirements governing intraLATA toll dialing and a nationwide implementation schedule appears to conflict with § 271 of the Act which contemplates individual state commission action on intraLATA toll dialing parity issues. In any event, the Commission has no authority to set aside state orders which have already taken effect pursuant to § 271 which grandfathers in state orders issued prior to December 19, 1995.

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company has been granted authority under this section to provide interLATA services originating in that State or before 3 years after the date of enactment of the Telecommunications Act of 1996, whichever is earlier."

[4]Investigation Into IntraLATA Interconnection Arrangements, Opinion and Order, PaPUC Docket No. I-00940034 (Entered December 14, 1995) p. 11 ("While a LEC may choose to file a rate rebalancing tariff at any time, the pendency of such a filing cannot serve to delay the implementation of intraLATA presubscription, but can and perhaps ideally, would be coordinated with the time frames prescribed for intraLATA presubscription. If a LEC chooses to file a rate rebalancing tariff prior to the disposition of the Universal Service Investigation which is anticipated to occur in June or July of 1996, the LEC should take into account that the findings reached in the Universal service Investigation will nonetheless govern the review and disposition of all rate rebalancing tariffs. While administrative efficiency would suggest that the filing or rate rebalancing tariffs should await the outcome of the Universal Service Investigation, no LEC will be foreclosed form filing a rate rebalancing tariff at any time.").

B. Number Administration

We strongly agree with the Commission's tentative conclusion that it should delegate matters involving the implementation of new area codes, such as the determination of area code boundaries to the state commissions, subject to the guidelines set forth in the Commission's Ameritech Order.[5] The Commission is correct that..."state commissions have legitimate interests in the administration of numbering...[and] that [they] are uniquely positioned to understand, judge and determine how new area codes can best be implemented in view of local circumstances." NOPR at para. 256.[6] We also strongly agree with the Commission that "issues related to area code relief plans often require prompt resolution due to the imminent exhaustion of central office codes in the area code at issue." NOPR at para. 257. We believe that states are in the best position to address these petitions quickly with full regard to any local concerns that are present or which may arise.

The PaPUC currently has one area code exhaustion petition now pending before it; and has been informed that two additional petitions are anticipated to be filed. On March 8, 1996,

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[5]See In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois Declaratory Ruling and Order, IAD File No. 94-102 (Released January 23, 1995) (the "Ameritech Order"). The Commission held in the Ameritech Order that administration of numbers: (1) must seek to facilitate entry into the communications marketplace by making numbering resources available on an efficient, timely basis to communications services providers; (2) should not unduly favor or disadvantage any particular industry segment or group of consumers; and (3) should not unduly favor one technology over another. Ameritech Order at paras. 17-20. The Commission should reexamine the Ameritech Order framework to ensure that it is broad enough to permit states to consider and implement additional and innovative means of area code relief, without unnecessarily curtailing state options to accommodate local concerns and conditions.

[6]The Commission's tentative conclusion is also consistent with the Commission's findings in In the Matter of Administration of the North American Numbering Plan, Report and Order, CC Docket No. 92-237 (Released July 13, 1995) ("NANP Order").

the NPA Relief Coordinator for the region including the 412 Area Code filed a petition with the PaPUC requesting that the PaPUC resolve issues pertaining to the appropriate relief plan for Pennsylvania's 412 area code. Industry efforts to resolve disputes pertaining to the appropriate relief plan have not been successful to-date. In its petition, the Coordinator estimates that Pennsylvania will exhaust the supply of available telephone numbers in the 412 area code by June 30, 1997. Consequently, the Coordinator requested PaPUC action by no later than July 1, 1996.[7]

Given the need to address NPA exhaust issues quickly, we urge the Commission to move expeditiously to address the more narrow phase II issues. If we are forced to act on this matter prior to the adoption of the Commission's Order in phase II of this proceeding, we run the risk of having acted in vain and having our determination completely set aside. We also risk putting in motion actions by the numbering Coordinator and other parties to our state proceeding which also may ultimately be in vain.

We also agree with the Commission's tentative conclusion to "delegate to Bellcore, the LECs, and the states the authority to continue performing each of their functions related to the administration of numbers as they existed prior to enactment of the 1996 Act until such functions are transferred to the new NANP administrator pursuant to the NANP Order." NOPR at para. 258. This would appear to be the least disruptive and most expedient course of action for the

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[7]On April 11, 1996, the PaPUC issued a Secretarial Letter regarding the NPA Relief Coordinator's petition and requested initial comment from interested parties by May 11, 1996 and reply comments by June 1, 1996. This would give the PaPUC sufficient time to act prior to July 1, 1996, as requested by the NPA Relief Coordinator. See In Re Petition of NPA Relief Coordinator to Resolve 412 Area Code Relief Plan Issues, PaPUC Docket No. P-00961027, Letter from John G. Alford dated April 11, 1996.

Commission to take. Nonetheless, we believe that after NANP assumes the LEC administrative responsibilities, the Commission should allow states to continue in their regulatory oversight role as contemplated by the NANP Order.[8]

With regard to the issue of whether the Commission should delegate any additional number administration functions to the states (NOPR at para. 258), PaPUC supports delegation of regulatory oversight of the central office ("C.O.") code assignment oversight function to state commissions, to the extent necessary for state procompetitive initiatives, including local number portability and/or local dialing parity measures.[9]

III. Conclusion

The Commission has no authority to set aside state commission orders implementing intraLATA toll dialing parity issued before December 19, 1995, which have been grandfathered in under § 271 of the 1996 Act. The Commission should similarly leave intact state orders issued after December 19, 1995, and permit other states to address this issue within the timeframes contemplated in § 271 of the statute. Finally, given the significant state interest in area code exhaustion issues, the PaPUC strongly supports the FCC's tentative conclusion to

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[8]See In the Matter of Administration of the North American Numbering Plan, Report and Order, CC Docket No. 92-237 (Released July 13, 1995) at paras. 77-78 ("Our requirements that CO code administration be centralized in the NANP Administrator simply transfers the functions of developing and proposing NPA relief plans from the various LEC administrators to the new NANP Administrator. note 160. State regulators will continue to hold hearings and adopt the final NPA relief plans as they see fit. ...We do not agree, however, that this necessarily compels the conclusion that CO Code administration, as opposed to regulatory oversight, must be performed at the local level by state regulatory agencies or local third party entities.").

[9]Accord, Petition for Limited Clarification and/or Reconsideration of the Pennsylvania Public Utility Commission in In the Matter of Administration of the North American Numbering Plan, CC Docket No. 92-237 submitted August 28, 1995.

continue to permit state resolution of these issues using the guidelines set forth in the Ameritech Order. The Commission should also allow states to continue in their regulatory oversight role as contemplated by the NANP Order including oversight of the C.O. code assignment function especially to the extent necessary to further state procompetitive initiatives.

Respectfully submitted,

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Chief Counsel

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Dated: May 20, 1996.

EXHIBIT "A"

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held December 14, 1995

Commissioners Present:

John M. Quain, Chairman
Lisa Crutchfield, Vice Chairman
John Hanger, Concurring - Statement attached
David W. Rolka
Robert K. Bloom

	Docket No.
Investigation Into IntraLATA Interconnection Arrangements	I-00940034

OPINION AND ORDER

BEFORE THE COMMISSION:

I. History of the Proceeding[1]

At our Public Meeting on May 4, 1994, we adopted an order initiating the above-captioned investigation. The Order was published in the Pennsylvania Bulletin on August 6, 1994, 24 Pa. B. 3931, et seq. The purpose of the investigation was to obtain information to assist the Commission in determining whether local exchange telephone subscribers should be allowed to select a long distance carrier for their intrastate IntraLATA toll telephone calls in the same manner that subscribers can now choose their long distance carrier for interstate and intrastate InterLATA toll telephone calls ("Presubscription"). Historically, since shortly after the Divestiture of AT&T, we established policies which

[1] The Protective Order, as amended, entered by the presiding Administrative Law Judge in this proceeding, protects from public disclosure certain information, as described therein. Accordingly, the Opinion and Order, as the Recommended Decision, does not contain any direct references to or quotations from the information covered by the terms of that Protective Order, as amended.

permitted intraLATA competition but did not concomitantly require local exchange carriers ("LECs") to allow customers to presubscribe to carriers other than their LEC for the provision of said services. The result of this long-standing policy was that all intraLATA traffic defaulted to the LEC unless the consumer took the extra step of accessing a different carrier either through the use of 10XXX or 1-800 access codes or through manipulation of their telephone equipment. The matter was assigned to the Office of Administrative Law Judge, and, thereafter, Administrative Law Judge ("ALJ") Robert P. Meehan for such proceedings as might be necessary and the issuance of a Recommended Decision.

The following parties participated actively in this proceeding, and presented comments or testimony in response to the questions in this investigation:

A. Interexchange Carriers

AT&T Communications of Pennsylvania, Inc. ("AT&T"); MCI Telecommunications Corp. ("MCI"); Sprint Communications Company, L.P. ("Sprint"); and Keystone Association of Long Distance Companies ("Keystone Altel") participated in the proceeding.[2]

B. Local Exchange Carriers

Bell Atlantic-Pennsylvania, Inc. ("Bell"); GTE North, Inc. ("GTE North"); The United Telephone Company of Pennsylvania ("United"); North Pittsburgh Telephone Company ("NPTC"); ALLTEL Pennsylvania, Inc. ("ALLTEL"); and Pennsylvania Telephone Association ("PTA") participated in the proceeding.[3]

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[2] Keystone Altel is an ad hoc group of small, non-dominant interexchange carriers providing intraLATA toll service on a 950 or 10XXX basis.

[3] In this proceeding, the PTA is representing the following LECs: Armstrong Telephone Company-North, Armstrong Telephone Company-Pennsylvania; Bentleyville Telephone Company; Breezewood Telephone Company; Buffalo Valley Telephone Company; Canton

c. Government Entities

The Commission's Office of Trial Staff ("OTS"); the Office of Consumer Advocate ("OCA"); and the Office of Small Business Advocate ("OSBA") participated in the proceeding.[4]

Two prehearing conferences were held, which resulted in the establishment of a schedule for the conduct of discovery and the filing of three (3) rounds of comments/testimony by the active parties. A Protective Order, as amended, was issued in this proceeding, as were several Prehearing Orders and a number of Orders pertaining to discovery issues.

Nine (9) days of evidentiary hearings were held in Harrisburg, PA, between March 27 and April 6, 1995. The transcript of the hearings totals 1,851 pages. Main Briefs were filed by all active parties. Reply Briefs were filed by all active parties, except Keystone Altel and OSBA.

After the briefs had been filed in this proceeding, the Commission, by Order entered June 26, 1995, granted the joint petition of Bell and AT&T to extend the time for the entry of a final Order. In light of this Order, Bell submitted proposed Bell

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Telephone Company; Citizens Telephone Company of Kecksburg; Citizens Utilities Company of PA; Commonwealth Telephone Company; Denver & Ephrata Telephone Company; Deposit Telephone Company, Inc.; Enterprise Telephone Company; Hancock Telephone Company; Hickory Telephone Company; Ironton Telephone Company; Lackawaxen Telephone Company; Laurel Highland Telephone Company; Mahanoy & Mahantango Telephone Company; Marianna & Scenery Hill Telephone Company; The North-Eastern PA Telephone Company; North Penn Telephone Company; Oswayo River Telephone Company; Palmerton Telephone Company; Pennsylvania Telephone Company; Pymatuning Independent Telephone Company; South Canaan Telephone Company; Sugar Valley Telephone Company; Venus Telephone Corp.; and Yukon Waltz Telephone Company.

[4] The OSBA did not submit any comments or testimony. It did, however, conduct cross-examination of a number of witnesses presented by the other parties.

Exs. 36-41, and AT&T submitted proposed AT&T Ex. 12. All of these documents are claimed to be "highly confidential" within the meaning of the amendments to the Amended Protective Order made by Interim Order #11, dated May 4, 1995. No objections have been made to these proposed exhibits, and they shall be admitted.

After the submission of these exhibits, Bell, AT&T and MCI filed Supplemental Main Briefs. Bell and AT&T have also filed Supplemental Reply Briefs.

On November 17, 1995, the Recommended Decision ("R.D." hereafter) of ALJ Meehan was issued. Pursuant to the Secretarial Letter issuing the R.D., exceptions were due to be received by the parties and Commission Staff no later than November 29, 1995. Deviations from this procedural schedule were not permitted.

ALJ Meehan's R.D. included the following Ordering Paragraphs and recommendations:

1. Bell Exhibits 36-41 and AT&T Exhibit 12 are admitted into the record of this proceeding.

2. All local exchange carriers shall implement intraLATA presubscription pursuant to the following schedule:

   a. within six (6) months after the entry date of the Commission's Order by all local exchange carriers having 250,000 or more access lines;

   b. within 12 months after the entry date of the Commission's Order by all local exchange carriers having more than 100,000, but less than 250,000, access lines; and

   c. within 18 months after the entry date of the Commission's Order by all local exchange carriers having less than 100,000 access lines.

3. The implementation of intraLATA presubscription, as provided in Ordering Paragraph 2, shall be subject to the following conditions:

a. no local exchange carrier shall be required to revise its existing dialing protocol for intraLATA toll calls by its customers;

b. the implementation of intraLATA presubscription shall be based on the use of Full 2-PIC method;

c. any local exchange carrier, having the ability to do so, may implement intraLATA presubscription earlier than the schedule in Ordering Paragraph 2; and

d. any local exchange carrier, upon a showing of good cause, may petition the Commission for a delay in the scheduled implementation of intraLATA presubscription, as otherwise provided in Ordering Paragraph 2.

4. Any local exchange carrier may, prior to its scheduled implementation of intraLATA presubscription, file a revised tariff or tariff supplement to rebalance its existing rate structure, subject to the following conditions:

a. the revised tariff or tariff supplement shall be revenue neutral;

b. the revised tariff or tariff supplement shall provide for the elimination of the common carrier line charge;

c. the revised tariff or tariff supplement shall contain an equal access recovery charge, designed to recover the local exchange carrier's direct incremental cost of providing intraLATA presubscription, within Pennsylvania;

d. the equal access recovery charge shall be assessed against all providers of intraLATA toll service, amortized over a period not to exceed eight (8) years;

e. the rates for intraLATA switched access service in any revised tariff or tariff supplement shall be designed to recover the

incremental cost and a reasonable proportionate share of the joint and common costs of providing access services;

f. the rates for any local exchange carrier's retail intraLATA toll service shall include an imputation of the local carrier's access charge, calculated so that the local exchange carrier's toll price exceeds a price floor equal to the sum of its incremental cost of supplying toll and its contribution (price less incremental cost) foregone from essential carrier access services that a competitor would have used in its toll service;

g. the revised tariff or tariff supplement shall not propose the recovery of any non-economic costs through increases in the rates for basic local exchange service;

h. the revised tariff or tariff supplement shall not propose the recovery of any losses anticipated from the implementation of intraLATA presubscription through increases in a local exchange carrier's basic local exchange service rates; and

i. the revised tariff or tariff supplement of any local exchange carrier, whose current rates for basic local exchange service do not recover the total service long run incremental costs of that service, may propose an increase in basic local exchange service rates designed to recover the total service long run incremental cost of that service.

5. Each revised tariff or tariff supplement, filed as permitted by Ordering Paragraph 4, shall be accompanied by a total service long run incremental cost study. The total service long run incremental cost study submitted by each local exchange carrier shall, to the fullest extent possible, be consistent with the Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers, adopted by the Colorado Public Utilities Commission, and included as part of the record in this proceeding as OCA Cross-Examination Exhibit No. 3.

6. All questions contained in the body of the Order instituting this investigation, included within Appendix A thereto, or within the statements of individual Commissioners are severed from this proceeding, and are

consolidated with the Commission's pending universal service investigation, at Docket No. I-00940034.

7. The proposals, suggestions, positions, etc., of any party or parties, which have not been included with the preceding Ordering Paragraphs, or are not contained within the following recommendations, are rejected.

* * *

8. To provide the local exchange carriers pricing flexibility to meet competitive pressures in a presubscribed intraLATA environment, the Commission should establish procedures for the expedited review and approval of proposed tariff changes by the local exchange carriers. Such expedited review and approval procedures, however, should not be utilized for the revised tariffs or tariff supplements permitted by Ordering Paragraph 4. Rather they should be used for proposed tariff revisions made subsequent to such revised tariffs or tariff supplements.

9. The Commission should not impose any cap on a local exchange carrier's access revenues. Similarly, the Commission should not impose any cap on a local exchange carrier's access rates.

10. For those local exchange carriers currently subject to caps on their access rates and revenues, the Commission should invoke its authority under Section 703(g) of the Public Utility Code, 66 Pa. C.S. §703(g), and amend its prior orders imposing or approving such caps to relieve the affected local exchange carrier of these caps.

Exceptions were received from the following parties, Bell, AT&T, PTA, Sprint, MCI, the OTS, the OCA, the OSBA, and ALLTEL.

Upon our consideration of the record, the positions of the parties, and the R.D., we hereby adopt the R.D. in its entirety except as modified below.

XI. Discussion

Initially, we note that in disposing of Exceptions we are not required to consider expressly or at great length each and every contention raised by a party to our proceeding. See, generally, University of Pennsylvania v. Pennsylvania Public Utility Commission, 86 Pa. 410, 485 A.2d 1217, (1984). Any exception or argument which is not specifically granted through our disposition herein, either expressly or by necessary implication, shall be deemed to have been duly considered and denied without further discussion.

A. Implementation Time Frame

In his recommendations beginning at page 157 of the R.D., and continuing to page 159, ALJ Meehan recommends the following timetable (summarized) for implementation of intraLATA presubscription:

> (a) six (6) months after the entry date of the Commission's Order for those LECs having 250,000 or more access lines;
>
> (b) twelve (12) months after the entry date of the Commission's Order for those LECs having more than 100,000 but less than 250,000, access lines;
>
> (c) eighteen (18) months after the entry date of the Commission's order for those LECs having less than 100,000 access lines;

Also, ALJ Meehan recommended that those LECs who have the ability to do so, implement intraLATA presubscription earlier than set forth in his recommended timetable. Further, ALJ Meehan recommended that we permit individual LECs to seek a delay in implementation of intraLATA presubscription upon petition to the Commission and a showing of good cause for the requested delay. See R.D., p. 159.

Consequently, ALJ Meehan has recommended a three-part phase-in of the proposed implementation. We would agree with the ALJ that implementation of presubscription is in the public interest and should occur as quickly as possible. However, the drive for implementation must be tempered by principles of fundamental fairness. For example, there is little doubt that substantial administrative and technical changes are required to provide a smooth transition to competitive presubscription. Further, the Universal Service Investigation docket should be concluded prior to any uniform implementation of the proposal addressed in the R.D. In this manner, the Commission will be in a position to take advantage of the specific findings expected in that investigation.

Moreover, a reasonable effort should be made to coordinate the opening of the intraLATA toll market with Bell's ability to enter the interLATA toll market. We fully expect this latter event to occur as a result of pending federal telecommunications legislation.

Therefore, while we support moving towards implementation with alacrity, a proper balancing of the aforementionad interests must occur. Based on the foregoing, we conclude that this can be accomplished by modifying the ALJ's implementation plan. By so doing, we will ensure a smooth transition without creating undesirable competitive advantages or disadvantages in the market place. We shall, therefore, modify the ALJ implementation plan and direct as follows:

1. Local exchange carriers serving in excess of 250,000 access lines shall implement intraLATA presubscription by June 30, 1997.

2. Local Exchange carriers serving 250,000 access lines or less shall implement intraLATA presubscription by December 31, 1997.

The presiding ALJ has also recommended that LECs be permitted to extend the implementation period for good cause shown. The good cause standard for a petition for waiver of the applicable time frames for intraLATA presubscription should be elaborated upon consistent with the Exceptions filed by AT&T. Such a petition should be promptly and timely filed, sufficiently far in advance of the implementation deadline for the Commission and other parties to scrutinize and resolve the petition before that date. The petition should itemize the specific steps that the LEC has already undertaken to implement presubscription, the specific problem that has arisen to create a potential delay, the remedial efforts undertaken to date, and a proposed time frame for resolution of the delay. Implementation efforts should continue while the petition is pending and the filing of a petition should not be used to thwart implementation. See AT&T Exceptions, pp. 12-14.

Any LEC that may file a Chapter 30 Petition following the issuance of this Order may petition for waiver of the presubscription implementation deadlines. The LEC must demonstrate that the waiver is necessary to facilitate its timely and reasonably balanced network deployment consistent with the requirements of Section 3003(b), 66 Pa. C.S. §3003(b). The length of the waiver should be considered on a case-by-case basis depending on the specific factual circumstances applicable to each filing LEC.

B. Rate Rebalancing

At page 160 of the R.D., ALJ Meehan recommends that the Commission, at such time as it orders implementation of intraLATA presubscription, adopt remedial measures to ensure that presubscription does not jeopardize the continued provision of basic local exchange service at an affordable price. In this regard, ALJ Meehan recommended (with certain conditions) that LECs be permitted to propose revenue neutral filings.

First, the ALJ recommends that such filings be accompanied by Total Long Service Incremental Cost Studies ("TSLRIC") studies, consistent with the Colorado Commission's format. See R.D., p. 161, citing OCA St. 1.0, at 6-7; and OCA CX Exhibits 2 and 3. We do not adopt this approach. We have already established parameters for TSLRIC studies in our Universal Service Investigation Docket No. I-00940035. Consequently, we direct that the studies and methods to be submitted in the Universal Service docket (expected this month), likewise, be used by the companies in their rate rebalancing tariff proceedings.

While a LEC may choose to file a rate rebalancing tariff at any time, the pendency of such a filing cannot serve to delay the implementation of intraLATA presubscription, but can and perhaps ideally, would be coordinated with the time frames prescribed for intraLATA presubscription. If a LEC chooses to file a rate rebalancing tariff prior to the disposition of the Universal Service Investigation which is anticipated to occur in June or July of 1996, the LEC should take into account that the findings reached in the Universal Service Investigation will nonetheless govern the review and disposition of all rate rebalancing tariffs. While administrative efficiency would suggest that the filing of rate rebalancing tariffs should await the outcome of the Universal Service Investigation, no LEC will be foreclosed from filing a rate rebalancing tariff at any time.

Second, the ALJ recommended that each company's rate rebalancing tariff include the elimination of the Common Carrier Line Charge ("CCLC"). See R.D. at 168 (Emphasis supplied). Although we would agree that the CCLC portion of the access charge is an appropriate starting point to properly align the cost of access, we are not prepared, at this time, to adopt a generic policy which eliminates the CCLC. Moreover, we are cognizant of the fact that the issue of access pricing is included in the Universal Service Investigation. Thus, we believe it appropriate to consider the

findings of that investigation to establish the proper access price and cost components. Armed with such generic guidelines, we can then move to apply such principles on a case-by-case basis in the context of each company's expected rate rebalancing filing.

Lastly, it is important to recall that Bell is the only LEC which operates pursuant to an alternative form of regulation. See In re Bell Atlantic - Pennsylvania Petition and Plan for Alternative Form of Regulation Under Chapter 30, Docket No. P-00930715 (Order entered June 28, 1994) ("Alternative Regulation Order"). In the Alternative Regulation Order, entered June 28, 1994, we stated the following:

> This Commission concludes that Bell's future tariff filings for noncompetitive services are to be confined to revenue neutral price changes within each market basket with the following caveat. To the extent that Bell can supply rational reasons as to why such a restriction is not feasible or advisable from a public policy standpoint, the Company may also propose an alternative revenue neutral price change tariff filing that provides for reductions in one market basket to be recovered from services included in other market baskets. This filing would be supplementary to and not in lieu of the revenue neutral price change tariffs for each market basket.

Slip Op. at 97.

With respect to Bell Atlantic's eligibility to submit a rate rebalancing tariff, a majority of this Commission recently voted to authorize Bell to submit such a revenue neutral rate filing that could apply to all noncompetitive services, including protected services. In the June 28, 1994 Opinion and Order in the Alternative Regulation Order docket, we also clarified that any such rate filing would have to be revenue neutral within each market basket, and that Bell retained the option of filing a supplemental tariff which would reflect inter-basket revenue neutral rate changes along with its proposed rationale as to why an

intra-basket revenue neutral tariff was not feasible or advisable from a public policy standpoint. Since that time, the Commission majority has concluded that protected service rates can be changed as part of revenue neutral rate restructurings, notwithstanding the rate freeze on protected services. The inter-basket revenue neutral rate change language contained in the June 28, 1994 Opinion and Order creates the possibility that Bell will seek to increase protected service rates in order to reduce the rates for other services within other market baskets. Consequently, if Bell chooses to propose a revenue neutral rate restructuring tariff that contains inter-basket rate changes, the accompanying rationale will be carefully scrutinized. Judgement on such a revenue neutral filing would be premature at this time, however, since no such filing has yet been submitted.

C. Non-Economic Cost Recovery

The ALJ recommends that rate rebalancing tariffs exclude proposed recovery of non-economic costs for basic exchange services. Non-economic costs are those which currently exist in basic service rates, but may not continue to be just and reasonable in a developing competitive market.

However, it is readily apparent that such costs are impossible to identify at this time. As a result, we are not prepared to include any estimated costs as part of a proposed rate rebalancing tariff. Alternatively, such costs should be addressed on a case-by-case basis subsequent to each company's rate rebalancing proceeding. Moreover, as experienced is gained in this area, a proper identification of these costs, (as well as a proposed recovery mechanism) will be much more precise in its implementation. This approach will permit us to benefit from market experience.

D. Imputation

Some of the LECs urge that all providers of intraLATA toll service, including the IXCs, should be subject to an imputation test. The IXCs are opposed to the application of any imputation test to them. The OCA argues that AT&T's proposed application of an imputation test to Optional Calling Plans ("OCPs") be rejected. The OSBA urges the adoption of the imputation test proposed by Bell.

According to Bell (Bell St. 3, at 43, and Exhibit D thereto), an economically efficient imputation formula would be one where:

> [A LEC's] toll price must exceed a price floor given by the sum of its incremental cost of supplying toll and its contribution (price - incremental cost) foregone from essential carrier access services that a competitor would have used in its toll service.

The IXCs, on the other hand, generally recommend an imputation test where the LECs price floor for toll services would equal the sum of the LECs incremental non-access cost of toll plus the tariffed price of the carrier access services used by the LEC to complete the call.

The ALJ's Recommended Decision concludes that:

> After considering the position of the parties on this point, I concur with the positions of the OCA and the OSBA. Accordingly, I recommend the adoption of the imputation test proposed by Bell, and that OCPs be excluded from the need to meet the imputation test.

R.D. at 174.

We are troubled by the ALJ's recommendation that imputation requirements be placed on LEC pricing of intraLATA toll services following the implementation of presubscription. At the same time, however, the ALJ does not impose a similar requirement on the pricing of IXC intraLATA toll services. In our view, adopting such a recommendation would create a competitive imbalance between LECs and IXCs in the intraLATA toll market. This is so for the ALJ's approach implicitly permits IXCs to market intraLATA service below cost, to attract Presubscription, and recover the loss through the pricing of other services. At the same time, the imputation requirement imposed on LECs would prevent incumbents from responding to this type of marketing strategy. Hence, they would be placed at a serious competitive disadvantage.

Our concerns with the ALJ's recommendation are heightened by the fact that Chapter 30 of the Code only directly imposes imputation requirements on LEC competitive services, not LEC non-competitive services. See 66 Pa. C.S. § 3005(e)(2). Although, Section 3005(b) appears to authorize and require the Commission to promulgate regulations to prevent LEC anti-competitive behavior engaged in the provision of any service, our ability to impose such a requirement on noncompetitive services through administrative order may be subject to legal challenge.

Thus, while our preference is to impose reciprocal imputation requirements on both LECs and IXCs, we must abandon this approach for two reasons. First, reciprocal imputation requirements are difficult to implement on a statewide basis. This is particularly true in an environment where various LECs have vastly different access prices.

Second, and more importantly, IXC intraLATA toll service in the Presubscription market, is presently defined by 66 Pa. C.S.

§3008(a) as a competitive service.[3] Pursuant to 66 Pa. C.S. §3008(b), the Commission is precluded from regulating the rates, toll charges or rate structures of IXC competitive services. The sole exception to such rate regulation is provided by 66 Pa. C.S. §3008(d) which prohibits IXCs from unilaterally de-averaging NTS rates. However, it does not appear that 66 Pa. C.S. §3008 prohibits IXCs from pricing their competitive services below cost, nor does it appear that the Commission can remedy such a situation without reclassifying the IXC service as noncompetitive. Accordingly, any attempts by the Commission to impose imputation requirements on IXC intraLATA toll services which are classified as competitive begs reversal on appeal.

In view of the foregoing, we have determined that the most balanced and legally defensible approach is to rely on the marketplace to control the pricing of intraLATA toll services, regardless of the service provider. While carriers may initially attempt to market these services below cost, in the long run the marketplace should prevent such activity from being sustainable.

We believe that it is imperative for the Commission to monitor this development in order to assure that balanced competition is achieved. We will not tolerate a situation in which the development of a fully competitive marketplace is hindered by anti-competitive behavior. If such a situation develops, we will undertake appropriate remedial measures. This includes consideration of classifying LEC services as competitive pursuant to 66 Pa. C.S. §3005(a)(1), reclassifying IXC services as noncompetitive pursuant

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[3] The only exceptions concern: (1) Interexchange service to aggregator telephones; and (2) Optional calling plans required by the Commission to be offered when justified by usage over an interexchange route. See also, Interexchange Carrier Regulation Under Chapter 30 of the Public Utility Code, Docket Nos. M-00930496, L-00940099, Declaratory Order, entered on January 10, 1995.